

## **MINUTES**

### **MONTANA SENATE 59th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY**

**Call to Order:** By **CHAIRMAN BRENT R. CROMLEY**, on January 21, 2005  
at 3:00 P.M., in Room 317-A Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Brent R. Cromley, Chairman (D)  
Sen. John Cobb (R)  
Sen. John Esp (R)  
Sen. Duane Grimes (R)  
Sen. Lynda Moss (D)  
Sen. Jerry O'Neil (R)  
Sen. Trudi Schmidt (D)  
Sen. Dan Weinberg (D)  
Sen. Carol Williams (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** David Niss, Legislative Branch  
Rita Tenneson, Committee Secretary

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: SB 156, 1/12/2005; SB 154,  
1/12/2005; SB 127, 1/12/2005  
Executive Action: SB 119; SB 150

**HEARING ON SB 156**

**Opening Statement by Sponsor:**

**SEN. MIKE COONEY, SD 40**, opened the hearing on **SB 156**, Raise CHIP eligibility through federal poverty level percentage.

The bill allows the Department of Health and Human Services, (DPHHS), if they believe they have covered the majority of kids at 150 percent or below for Children's Health Insurance Program (CHIP) and the funding is available, to move above the 150 percent poverty level and insure more kids.

***{Tape: 1; Side: A; Approx. Time Counter: 0 - 6.3}***

**Proponents' Testimony:**

**Chuck Hunter, Administrator Health Resources Division, DPPHS**, said the bill addresses federal funding re-authorization of the CHIP program, which Congress will possibly set at a higher level than at the present. Congress redistributes funds from the CHIP program, sending funds back to states that fully extend their CHIP allotment. He has received confirmation his department will receive \$1.6 million as redistribution funds. If the Medicaid asset test for children was removed, they could move kids from the CHIP program into Medicaid.

***{Tape: 1; Side: A; Approx. Time Counter: 6.3 - 8.9}***

**REP. MARY CAFERRO, HD 80, HELENA**, explained that if the Department wasn't given flexibility for CHIP, some children wouldn't be able to access CHIP because there would be more money than children.

***{Tape: 1; Side: A; Approx. Time Counter: 8.9 - 9.6}***

**Tanya Ask, Blue Cross Blue Shield of Montana**, gave the committee a copy of the Montana State Planning Grant regarding the initiative's analysis of the uninsured in Montana. There are over 41,000 children under the age of 18 who are uninsured. One of the first recommendations of the organization was to expand CHIP eligibility for children using federal dollars.

**EXHIBIT** (phs16a01)

***{Tape: 1; Side: A; Approx. Time Counter: 9.6 - 11}***

**Linda Gryczan, League of Women Voters of Montana** read her written testimony.

**EXHIBIT** (phs16a02)

**Erin McGowan Fincham, State Auditor's Office.** The Commissioner is a consistent supporter of the CHIP program. Recent passage of Initiative 149 maximized federal funds available for the CHIP program.

*{Tape: 1; Side: A; Approx. Time Counter: 11 - 13.5}*

**Mike Foster, St. Vincent Hospital, Billings; St. James, Butte; Holy Rosary, Miles City; and Wheatland Memorial, Harlowton,** firmly believes it will reduce the many uninsured children.

*{Tape: 1; Side: A; Approx. Time Counter: 13.5 - 14.8}*

**Steve Yeakel, MT Council for Maternal and Child Health,** rose in support.

*{Tape: 1; Side: A; Approx. Time Counter: 14.8 - 15.9}*

**Claudia Clifford, American Association of Retired People (AARP),** rose in support.

**EXHIBIT** (phs16a03)

**EXHIBIT** (phs16a04)

**Betty Beverly, Executive Director, Montana Senior Citizens Association,** supported the extension of CHIP.

*{Tape: 1; Side: A; Approx. Time Counter: 15.9 - 17.6}*

**Bonnie Adee, Mental Health Ombudsman, State of Montana,** rose in support.

*{Tape: 1; Side: A; Approx. Time Counter: 17.6 - 19.3}*

**Janie McCall, Deaconess Billings Clinic and Montana Children's Initiative Provider Association,** read written testimony.

**EXHIBIT** (phs16a05)

**Bill Kennedy, Yellowstone County Commissioner,** rose in support.

**John Flink, Montana Health Association (MHA)**, rose in support.

**Beda Lovitt, MT Medical Association and Montana Psychiatric Association**, rose in support.

**Eric Sheidemeyer Director, Montana Catholic Conference and Montana Catholic Bishops**, rose in support.

**Kim Averid, Working for Equality and Economic Liberation**, rose in support.

**Colleen Fenterfitt, United States Health Services**, rose in support.

**Anita Roessmann, Montana Advocates Program**, rose in support.

**Joan Miles, Director, Lewis and Clark City County Health Department**, told the committee the health directors from Butte, Silver Bow, Cascade, Missoula, Yellowstone, Gallatin, and Flathead counties all support the bill.

*{Tape: 1; Side: A; Approx. Time Counter: 19.3 - 25.2}*

**Opponents' Testimony:** None.

**Informational Testimony:** None.

**Questions from Committee Members and Responses:**

**SEN. WEINBERG** asked why the percentage wasn't increased from 150 to 200 percent. **Mr. Hunter** replied the basic requirement that exists in the statute is between 100 and 150 percent. The new clause says that if it is determined money is available, they can raise the requirement to above 150 percent and up to 200 percent.

**SEN. WEINBERG** thought you could also read the bill as a limitation below 150 percent and was that a concern. **Mr. Hunter's** answered that if that were the effect, it would be a concern.

*{Tape: 1; Side: A; Approx. Time Counter: 25.2 - 27.2}*

**SEN. GRIMES** asked if there were similar models of this level of delegation in other states. **Mr. Hunter** answered that he wasn't sure of other CHIP programs, but other states had gone to higher levels. **SEN. GRIMES** inquired whether states with CHIP projects

and higher levels of poverty affecting funding have ranges similar to this. **Mr. Hunter** replied yes.

*{Tape: 1; Side: a; Approx. Time Counter: 27.2 - 28}*

**SEN. CROMLEY** wanted to know if there was a limitation on the number of times per year the amount can be changed. **Mr. Hunter** told him that a redistribution, or federal authorization, might give them a different amount of money than they expected. This may reduce funding for additional children. He did not see that happening, however. **SEN. CROMLEY** asked if federal government restrictions could disallow this type of percentage change within the year. **Mr. Hunter** was not aware of any.

**SEN. GRIMES** asked **SEN. COONEY** if the delegation of authority, pertaining to funding, would be a problem in the future. **SEN. COONEY** replied the Legislature put parameters in the bill setting a ceiling they cannot go over. He added they are audited on a regular basis.

*{Tape: 1; Side: B; Approx. Time Counter: 0 - 2.9}*

**SEN. COBB** said a perfect example was Governor Martz taking one-time money to take care of a waiting list. He asked if one has one-time money, what does one do the next time. This is an example of insufficient funds coming up in the future. **SEN. COONEY** told him when he was working on the bill and talking to the Department, sustainability was a large part of the equation. He didn't want children put into the program and, in a year, not have the money. **SEN. COBB** answered that the Governor did this outside the Department.

**SEN. ESP** asked **SEN. COONEY** if they had amendments regarding sustainability parameters that would work. **SEN. COONEY** thought that would be appropriate.

*{Tape: 1; Side: B; Approx. Time Counter: 2.9 - 4.2}*

**SEN. GRIMES** asked **Mr. Hunter** if there were any examples he could think of regarding funding discretions the Department has. **Mr. Hunter** could think of one in the late 1980s when he was working in unemployment insurance. Unemployment insurance was insolvent, and they borrowed money from the federal government to pay the benefits in Montana. A new tax structure was adopted by the Legislature which added additional surcharges. They were added to rebuild the balance of the fund. Discretion was given to the

Department to determine a point when they had a positive balance and a sustainable program. The budget office reviewed the Department's conclusions. **SEN. GRIMES** wanted a current example from the Department from **Mr. Hunter**.

*{Tape: 1; Side: B; Approx. Time Counter: 4.2 - 6.2}*

**Closing by Sponsor:**

**SEN. COONEY** closed by telling **SEN. GRIMES** someone handed him a note saying the Montana Older American Act has wording in that its aging services can be provided subject to the availability of funding. He urged the committee to take a good look at the bill and, if they had some amendments to place on the bill, he would be happy to work with them.

**HEARING ON SB 154**

**Opening Statement by Sponsor:**

*{Tape: 1; Side: B; Approx. Time Counter: 6.2 - 7.4}*

**SEN. JOHN COBB, SD 9**, opened the hearing on **SB 154**, Limit CHIP administrative and reserve costs.

He gave the committee a handout referring to page 1 line 22 where it refers back to administrative costs should there be questions later. He added the bill makes it clear if the Department chooses to contract out CHIPS, there are certain requirements on administrative costs. He explained page 1, lines 28-30 which he referred to the handout and it being the same law being used in the Montana Comprehensive Association - the high-risk pool in the State Auditor's Office. He added Blue Cross had two pages of amendments which he hadn't had a chance to look at.

**EXHIBIT (phs16a06)**

**Proponents' Testimony:**

**REP. MARY CAFERRO, HD 80, HELENA** sat on the State Planning Grant for the Uninsured and on the Safety Net Subcommittee. They requested a cost analysis from the Department. She told the committee the one she was handing out was outdated, but a new one was coming out. The cost analysis showed them the program is not in compliance with the federal law requiring a 10 percent cap on administrative costs. By implementing the bill and keeping

administrative costs down, there will be more money in the system to cover more children.

**EXHIBIT** (phs16a07)

***{Tape: 1; Side: B; Approx. Time Counter: 10 - 13.4}***

**Colleen Senterfelt, New West Health Insurance**, has no problem with the language in the bill. They would be open to amendments being introduced and would like to give further comment on those.

**Susan Witte, Vice President and Chief Legal Council Allegiance Benefit Plan National Inc.** She also would like to see the amendments.

**EXHIBIT** (phs16a08)

**EXHIBIT** (phs16a09)

**Claudia Clifford, American Association of Retired People of Montana, (AARP)**, rose in support of the CHIP program.

**EXHIBIT** (phs16a10)

**Kim Abbott, Working for Equality and Economic Liberation**, presented written testimony.

**EXHIBIT** (phs16a11)

**Opponents' Testimony:** None.

**Informational Testimony:**

**Chuck Hunter, DPHHS**, told the committee federal regulation already limits the administrative portion of the program to 10 percent. They could not go to 12 percent as suggested in the bill if they were to self-administer. The Centers for Medicaid and Medicare Services (CMS) has told them concretely, along with written confirmation, when buying a fully insured risk bearing product, those administrative costs of the insurer and the premium they pay are not subject to the 10 percent cap. Those have to be considered separately. If they were to buy administrative services contracts, they would count against the State Administration. He said they need to be careful when they approach those options making sure they are in conformity with federal regulations at the 10 percent cap. He has seen the amendments from Blue Cross Blue Shield, which put forth a list of options the State may chose from. He would like time to work

through them, making sure the list of options gives a full range of choices.

***{Tape: 1; Side: B; Approx. Time Counter: 13.4 - 20}***

**Tanya Ask, Blue Cross Blue Shield Montana** presented amendments. The children's health insurance program is a fully insured product. As a fully insured product, the State has purchased health insurance from a carrier and, today, that insurance can be purchased from any carrier that operates in Montana. Some of the cost required from a fully insured program is that all premiums are subject to an assessment of the Montana Comprehensive Health Association. Because the State has limited its risk by purchasing insurance, Montana children with coverage through the CHIP program are also paying that Montana Comprehensive Health Association assessment. That is a 1 percent assessment against all premiums underwritten in the State of Montana which will add additional costs.

[EXHIBIT \(phs16a12\)](#)

[EXHIBIT \(phs16a13\)](#)

**Questions from Committee Members and Responses:**

**SEN. SCHMIDT** asked **Mr. Hunter** to repeat what he said about CMS and buying a risk-sharing product. **Mr. Hunter** told her federal regulation describes two kinds of payments made from CHIP programs. One is a payment for primary health care expenditures. They get the full matching funds as they are services to the kids you are providing health coverage. The other things CHIP pays for are administrative costs related to the State operation of the program. These are subject to a 10 percent cap. CMS has told them the costs of a fully insured premium, which is administrative in nature, is part of a primary health care expenditure and not subject to the 10% cap.

***{Tape: 2; Side: A; Approx. Time Counter: 0 - 1.7}***

**Closing by Sponsor:**

**SEN. COBB** closed.

**HEARING ON SB 127**

**Opening Statement by Sponsor:** **SEN. BOB KEENAN, SD 5**, opened the hearing on **SB 127**, Medicaid redesign: home and community-based services.



He told the committee the bill is a result of statutes that needed clarification and updating by the Legislative Council. The Council assigned the Department the authority to operate currently home- and community-based waivers. This makes sure the Department has statutory authority in place to operate these waivers.

***{Tape: 2; Side: A; Approx. Time Counter: 1.7 - 4.1}***

**Proponents' Testimony:**

**Kelly Williams, Administrator, Senior and Long Care Division, DPHHS**, told the committee the bill brings them up to date with federal laws. She had amendments being proposed by the Department which will be introduced by **SEN. COBB**.

[EXHIBIT\(phs16a14\)](#)

[EXHIBIT\(phs16a15\)](#)

***{Tape: 2; Side: A; Approx. Time Counter: 4.1 - 7.9}***

**Opponents' Testimony:** None.

**Informational Testimony:** None.

**Questions from Committee Members and Responses:** None.

**Closing by Sponsor:**

**SEN. KEENAN** closed.

**SEN. CROMLEY** asked the Committee about Executive Action on **SB 156**. **SEN. GRIMES** asked **Mr. Niss** to look at case in the MCA giving legislative authority and laying down reasons behind statutes on subscribed standards and guides to the granted power given to the Agency.

***{Tape: 2; Side: A; Approx. Time Counter: 7.9 - 11}***

The committee discussed **SB 101**. **SEN. SCHMIDT** is getting an amendment drafted.

***{Tape: 2; Side: A; Approx. Time Counter: 11 - 15}***

The committee discussed **SB 112**. There were amendments which the committee had not be able to discuss.

*{Tape: 2; Side: A; Approx. Time Counter: 15 - 24.5}*

**EXECUTIVE ACTION ON SB 119**

**Motion:** SEN. GRIMES moved that SB 119 BE AMENDED WITH SB011902.ADN.

**Discussion:** SEN. GRIMES explained the amendment saying that, if the judge turns his responsibility over to the Committee, the Committee will release their recommendations to the party involved which have ten days to file written objections which the judge will have final review. If there are no objections, then it will not be reviewed.

**EXHIBIT** (phs16a16)

*{Tape: 2; Side: B; Approx. Time Counter: 0 - 2.7}*

**Shirley Brown, Division Administrator, Child and Family Services,** said the amendment did address some of **Judge Sherlock's** objections. She had talked to **Mr. Niss** about the amendment and the other possible option could be to pass this amendment and also allow the judge to request a hearing after receiving the findings. She thought if after the parties have received the recommendations and nobody objects, then there would be no reason for the court to proceed with the hearing. If they do object, there can be a hearing and the court can hear everything. It does address the issue.

*{Tape: 2; Side: B; Approx. Time Counter: 2.7 - 3.6}*

**Motion/Vote:** SEN. GRIMES moved that SB 119 BE AMENDED WITH SB011901.ADN. Motion carried 8-1 by voice vote with SEN. WEINBERG voting no.

**Motion/Vote:** SEN. SCHMIDT moved that SB 119 DO PASS AS AMENDED. Motion carried 8-1 by voice vote with SEN. WEINBERG voting no.

**SEN. CROMLEY** brought up **SB 137** and asked **SEN. ESP** to explain his amendments. **SEN. ESP** said the amendments refer to exempting the earlobe from body piercing. The other amendment reads that the local Board of Health may implement its own licensure and regulatory program for tattooing and body piercing establishments independent of the Department. The local Board of Health, licensing and regulatory program must be operated in lieu of the Department's licensure regulatory program subject to the

restrictions of 50-2-130 Local Board Program research pursuant to Section 1. He has one set of amendments and will be presenting another set at a later time.

***{Tape: 2; Side: B; Approx. Time Counter: 3.6 - 8}***

**SEN. O'NEIL** said he has an amendment to insert on page 6, line 3 after tattoos or body pierces that somebody can't tattoo or body pierce a child under the age of majority without the explicit consent of the child's parent or guardian.

**EXECUTIVE ACTION ON SB 150**

***{Tape: 2; Side: B; Approx. Time Counter: 8 - 10.2}***

**Motion/Vote:** **SEN. O'NEIL** moved that SB 150 DO PASS. Motion carried 9-0 by voice vote.

**SEN. CROMLEY** requested a motion in the instances where amendments are, at the time the bill is passed, if there are grammatical errors that Legislative Staffer, **David Niss**, has the authority to correct the errors.

**Mr. Niss** explained that Legislative Services had asked all the committee staffers to ask all their committees for the motion because the rules don't yet require that all amendments be drafted in accordance with bill drafting. He said the motion should be to direct the staff to write the reports to the bill drafting.

**Motion/Vote:** **SEN. WILLIAMS** moved the request. Motion carried unanimously.



**ADJOURNMENT**

Adjournment: 4:40 P.M.

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SEN. BRENT R. CROMLEY, Chairman

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RITA TENNESON, Secretary

BC/rt

Additional Exhibits:

**EXHIBIT ([phs16aad0.PDF](#))**